

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2479

AN ACT

AMENDING SECTIONS 35-1001, 35-1002 AND 35-1004, ARIZONA REVISED STATUTES;
RELATING TO SWAP AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 35-1001, Arizona Revised Statutes, is amended to
3 read:

4 35-1001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Governmental entity" means this state, any county, city,
7 town, ~~municipality~~ or other political subdivision of this state or any
8 department, agency, board, commission, authority, ~~political subdivision~~,
9 public corporation or other public entity of any of the foregoing or
10 controlled by any of the foregoing, ~~provided that each of the foregoing must~~
11 ~~comprise a geographical area with a population of at least three hundred~~
12 ~~thousand persons according to the most recent United States decennial census~~
13 ~~or special census.~~ IF THE GOVERNMENTAL ENTITY IS A CITY OR TOWN, THE CITY OR
14 TOWN MUST HAVE A POPULATION OF MORE THAN FIFTY THOUSAND PERSONS.

15 2. "Obligations" means bonds, notes, bond anticipation notes,
16 commercial paper or other evidences of indebtedness or lease, installment
17 purchase or other agreements or purchasing programs or certificates of
18 participation.

19 3. "PUBLIC FUND" MEANS THE ARIZONA STATE RETIREMENT SYSTEM ESTABLISHED
20 BY TITLE 38, CHAPTER 5, ARTICLE 2, THE ELECTED OFFICIALS' RETIREMENT PLAN
21 ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 3, THE PUBLIC SAFETY PERSONNEL
22 RETIREMENT SYSTEM ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 4, THE
23 CORRECTIONS OFFICER RETIREMENT PLAN ESTABLISHED BY TITLE 38, CHAPTER 5,
24 ARTICLE 6 AND ANY TRUST FORMED BY ANY OF THE SYSTEMS OR PLANS FOR INVESTMENT
25 PURPOSES.

26 3. 4. "Swap agreement" means an agreement, between a governmental
27 entity and a financial institution, including an insurance company, ~~A~~ bank
28 indemnity company or a company related to a financial institution, pursuant
29 to which payments are to be made by the governmental entity to the financial
30 institution and are also to be made by the financial institution to the
31 governmental entity, and which is entered into in order to manage interest
32 rate risk, investment risk, or commodity prices or is entered into in
33 connection with carrying or securing of obligations of a governmental entity.

34 Sec. 2. Section 35-1002, Arizona Revised Statutes, is amended to read:

35 35-1002. Swap agreements; provisions; purposes; credit
36 enhancement

37 A. A governmental entity may enter into, modify, amend and terminate
38 one or more swap agreements that it determines to be necessary or desirable
39 in connection with, or incidental to, the conduct of its activities including
40 in connection with the issuance, carrying or securing of obligations or the
41 acquisition or carrying of investments. A governmental entity may enter into
42 swap agreements which are to be effective at a future date or which
43 constitute an option to enter into swap agreements. Swap agreements entered
44 into by a governmental entity shall contain such provisions, including
45 payment, term, security, collateralization, termination penalty, default and

1 remedy provisions, and shall be with such parties as the governmental entity
2 determines to be necessary or desirable after due consideration to the
3 creditworthiness of the parties. If the party to the swap agreement which is
4 not the governmental entity is not rated by a nationally recognized rating
5 agency in one of the top two rating categories of the rating agency at the
6 time the swap agreement is entered into, the party shall collateralize its
7 obligations under the swap agreement with securities or cash acceptable to
8 the governmental entity. Swap agreements may be payable from revenues of a
9 utility undertaking, excise taxes, ad valorem taxes, street and highway
10 revenues, monies that may be pledged to pay debt service on any bonds or
11 other long-term obligations relating to the swap agreements, or any other
12 legally available monies, as determined by the governmental entity.

13 B. A governmental entity shall not enter into a swap agreement other
14 than for the purpose of managing an interest rate, commodity price,
15 investment or similar risk that arises in connection with, or incidental to,
16 the activities of the governmental entity. A governmental entity shall not
17 carry on a business of acting as a dealer in swap agreements.

18 C. In connection with entering into any swap agreement a governmental
19 entity may enter into agreements which enhance the governmental entity's
20 credit in the swap agreement or enhance the liquidity of the swap agreement,
21 including a line of credit, letter of credit, insurance policy or other
22 security.

23 D. BEFORE ENTERING INTO A SWAP AGREEMENT, A GOVERNMENTAL ENTITY MUST:
24 1. REQUIRE ITS CHIEF FINANCIAL OR INVESTMENT OFFICER TO ESTABLISH A
25 SWAP AGREEMENT POLICY THAT SETS FORTH GUIDELINES AND PARAMETERS FOR THE USE
26 OF SWAP AGREEMENTS THAT ARE CONSISTENT WITH RECOMMENDATIONS OF NATIONALLY
27 RECOGNIZED RATING AGENCIES.

28 2. ENGAGE AN INDEPENDENT ADVISOR WITH AT LEAST FIVE YEARS OF EXPERTISE
29 IN REVIEWING SWAP AGREEMENTS TO REVIEW THE PROPOSED SWAP AGREEMENT AND
30 DETERMINE THAT THE PROPOSED SWAP AGREEMENT COMPLIES WITH THE POLICY ADOPTED
31 PURSUANT TO PARAGRAPH 1 AND IS FISCALLY APPROPRIATE FOR THE GOVERNMENTAL
32 ENTITY TO ENTER INTO. FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT
33 ADVISOR" MEANS AN ENTITY OR ORGANIZATION THAT IS NOT AFFILIATED WITH THE
34 FINANCIAL INSTITUTION AND THAT IS CHOSEN THROUGH A COMPETITIVE PROCUREMENT
35 PROCESS, INCLUDING SUBMITTING A LIST OF ALL SIMILAR TRANSACTIONS THAT THE
36 BIDDER HAS REVIEWED OR ENGAGED IN DURING THE FIVE YEARS IMMEDIATELY PRECEDING
37 THE BID.

38 3. RECEIVE A STATEMENT FROM THE FINANCIAL INSTITUTION WITH WHICH THE
39 GOVERNMENTAL ENTITY IS ENTERING INTO A SWAP AGREEMENT THAT DISCLOSES THE
40 PRICING AND TERMS OF THE PROPOSED SWAP AGREEMENT.

41 E. GOVERNMENTAL ENTITIES THAT ENTER INTO SWAP AGREEMENTS PURSUANT TO
42 THIS SECTION SHALL REPORT THE PRICING WITHIN SIXTY DAYS AFTER EXECUTION OF
43 THE AGREEMENT AND SHALL REPORT ANY RATING CHANGE FOR THE TRANSACTION WITHIN
44 FIVE DAYS TO THE DEPARTMENT OF REVENUE FOR REVIEW BY THE DEBT OVERSIGHT
45 COMMISSION ESTABLISHED BY SECTION 35-504.

1 F. IF THE GOVERNMENTAL ENTITY THAT ENTERS INTO A SWAP AGREEMENT IS A
2 PUBLIC FUND, THE REQUIREMENTS OF SUBSECTIONS D AND E OF THIS SECTION DO NOT
3 APPLY UNLESS THE PUBLIC FUND IS ISSUING OBLIGATIONS AND USES A SWAP AGREEMENT
4 TO MANAGE RISKS RELATING TO THAT OBLIGATION.

5 Sec. 3. Section 35-1004, Arizona Revised Statutes, is amended to read:

6 35-1004. Treatment, calculation and payment of amounts due
7 under swap agreements

8 A. A governmental entity may deduct amounts ~~which~~ THAT the
9 governmental entity is to receive pursuant to swap agreements from the
10 amounts due on its bonds or other long-term obligations for the purposes of
11 determining:

12 1. Whether a governmental entity has satisfied statutory requirements
13 concerning revenue coverage that are applicable to its bonds or other
14 long-term obligations.

15 2. Whether a governmental entity has satisfied any maximum rate of
16 interest that may be paid on the bonds or other long-term obligations.

17 3. The amount of taxes, rates or charges to be levied or collected to
18 pay amounts due ~~upon~~ ON its bonds or other long-term obligations.

19 B. ~~Until payment of all obligations under swap agreements and the~~
20 ~~expiration of the fiscal year in which swap agreements are paid in full, no~~
21 ~~amounts collected for the purpose of paying amounts due under the swap~~
22 ~~agreements shall be subject to the provisions of title 42, chapter 17,~~
23 ~~article 2.~~